

To: CN=Tom Hagler/OU=R9/O=USEPA/C=US@EPA[]
Cc: []
Bcc: []
From: CN=Erin Foresman/OU=R9/O=USEPA/C=US
Sent: Tue 6/1/2010 6:16:21 PM
Subject: Re: 404 Guru

In the attached document (River Islands 404(q) 3a letter), see pages four through 6 for good discussion with references on project purpose and alternatives. Also the quotes below from 404q elevation decision documents written by Department of Army. Lastly, just in case it may come in handy, see the attached excel spreadsheet. It's a good 404 "cheat sheet" with quotables from all 404 regs, EPA Guidance, and elevation decision documents. It does not include the multitude of Corps RGLs.

Hartz Mountain

"While it appears that the District made a conscious effort to view the project from a more basic purpose perspective, this was not the approach taken by Hartz in evaluating potential alternative sites....This approach seriously flaws the validity of the alternatives analysis and is inconsistent with the Guidelines. Limiting project sites to those that can facilitate a 3,301 unit development may preclude the evaluation of otherwise practicable alternatives. Acceptance of this very restrictive alternatives analysis negates all attempts to otherwise more generically define basic project purpose." Hartz Mountain 404(q) Elevation Guidance Memo August 17, 1989

"In this case, as in both the Plantation Landing and Hartz Mountain cases, the Corps district defined a project purpose that is too specific to the applicant's proposal.....We are concerned that the application of the overly restrictive definition of project purpose could have resulted in an incomplete analysis of alternative sites. Also, in this instance, the consideration of onsite alternatives could have been limited by the project purpose statement....The basic project purpose can be neither so broadly defined nor alternatively so narrowly defined so as [to] render the alternative analysis meaningless or impracticable. In both cases this would subvert the intent of the Guidelines.....It is only when the 'basic project purpose' is reasonably defined that the alternatives analysis required by the Guidelines can be usefully undertaken by the applicant and evaluated by the Corps.....The alternatives analysis required under the Guidelines relies on a reasonably defined 'project purpose' (See 40CFR 230.10(a)(1) and (a)(3)), and requires substantive evaluations and judgement on the part of the Corps. Finally, the project purpose should be concisely stated in one or two sentences." Old Cutler Bay 404(q) Elevation Guidance Memo September 13, 1990

"The permit evaluation must be made based on a single, concise statement of project purpose determined by the Corps to be appropriate. Specifically naming the Newcoal site in the project purpose statement is too specific to Andalex's proposal. Furthermore, referencing a 10 mile distance from Andalex's coal processing facility as a practicable limit for searching for alternative mining sites may also be too specific." Andalex 404(q) Elevation Guidance Memo October 2, 1991

Erin Foresman
US EPA Region 9
1325 J Street, 14th floor
C/O Army Corps of Engineers
Sacramento, CA 95814-2922
Phone: (916) 557 5253

Fax: (916) 557 6877

-----Tom Hagler/R9/USEPA/US wrote: -----

To: Erin Foresman/R9/USEPA/US@EPA
From: Tom Hagler/R9/USEPA/US
Date: 06/01/2010 10:25AM
Subject: 404 Guru

I am multitasking during this interminable BDCP call.

Here's a question: What is the citation, to what (regs?b1 guidelines?) that says the project purpose ultimately defines the scope of alternatives.

Here's what I have for NEPA and 404, but I need a better "straight line" from project purpose to alternatives for 404.

Any thoughts?

" Under NEPA, the action agency must include a "purpose and need" statement that must "specify the underlying purpose and need to which the agency is responding...." 40 CFR Section 1502.13. The purpose and need statement drives the alternatives that must be analyzed in the Environmental Impact Statement, and the alternatives are "the heart of the environmental impact statements." 40 CFR Section 1502.14.

"Under CWA Section 404, the permit applicant must demonstrate that the chosen alternative is the "least environmentally damaging practicable alternative" (LEDPA) for meeting the project purpose pursuant to the CWA Section 404(b)(1) Guidelines. [TMH Tie to the words "purpose." Is that in the Guidelines?]